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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/280,283	03/29/99	RICHELSOPH	M 0184.00037

QM32/0924

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EXAMINER

WOO, J

ART UNIT

PAPER NUMBER

3731

DATE MAILED:

09/24/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/280,283

Applicant(s)

Richelsoph

Examiner

Julian W. Woo

Group Art Unit  
3731



☒ Responsive to communication(s) filed on 9-9-99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3731 (formerly 3309)

### **DETAILED ACTION**

1. The examiner hereby acknowledges the communication of 05-17-99, which submits claims 35, 36, 37, 38, 39, 41, 42, and 46 for prosecution. These claims have been renumbered respectively as claims 1, 2, 3, 4, 5, 6, 7, and 8.

### ***Claim Objections***

2. Claims 1, 4, and 5 objected to because of the following informalities: In claim 1, line 4, it is recommended that --and-- be inserted between "therefrom" and "combining," and that "in" be deleted. In claims 4 and 5, "relates" should be replaced by --relative--.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Errico et al. (5,520,690). They disclose in figure 5a an insert having a base portion (136) and a plurality of flexible arms (140).

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5. Claims 2-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Errico et al. (5,669,911). They disclose in figures 6-9 a body member (201) having a rod receiving means (206) and an internal portion (205) with a stop means (203) and a radially inwardly extending lip (202) for retaining a screw head (122) and an insert (150). Figures 8 and 9 illustrate the method of spinal rod fixation as claimed.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ralph et al. (5,607,426) and Errico et al. (5,643,265) teach inserts; while Errico et al. (5,647,873), Biedermann et al. (5,672,176), and Sherman et al. (5,797,911) teach inserts and body members for spinal rod-and-screw fixation.

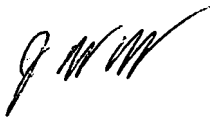
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7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached at (703) 308-0871.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703)308-0858. The FAX number is (703)305-3579.



Julian W. Woo  
Patent Examiner



MICHAEL BUIZ  
SUPERVISORY PATENT EXAMINER  
GROUP 3300



September 22, 1999